



# United States Department of the Interior

## OFFICE OF THE SECRETARY

Office of Environmental Policy and Compliance

1849 C Street, NW – MS 2342-MIB

WASHINGTON, D.C. 20240

### ELECTRONIC MAIL MEMORANDUM

January 7, 2004

To: Assistant Secretary, Indian Affairs  
Director, Fish and Wildlife Service  
Director, National Park Service  
Director, Geological Survey  
Director, Bureau of Land Management

From: Team Leader, Natural Resources Management  
Office of Environmental Policy and Compliance

Subject: Request for Technical Assistance on State of Alaska Regulations for Water-Power  
Development Projects (ER 04/11)

The State of Alaska has published a Notice of Inquiry on the above subject. A copy is attached.

Please review the document from your jurisdiction or special expertise and provide any comments you may have to the Regulatory Commission of Alaska by January 28, 2004. Please provide a copy of any comments you make to this office.

Comments should reflect that they are being provided on a technical assistance basis and do not reflect the views and comments of the Department of the Interior.

/s/ 1/7/04

Terence N. Martin

Attachment

cc: Assistant Secretaries

OEPC-Staff Contact: Terry Martin, 202-208-5465; terry\_martin@ios.doi.gov

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair  
Kate Giard  
Dave Harbour  
James S. Strandberg  
G. Nanette Thompson

In the Matter of the Consideration of Regulations  
for Water-Power Development Projects )

R-03-5

ORDER NO. 1

**ORDER ISSUING NOTICE OF INQUIRY AND ESTABLISHING  
SCHEDULE FOR PUBLIC COMMENTS**

BY THE COMMISSION:

Summary

We initiate an inquiry to develop regulations for water-power development projects in response to recently enacted legislation. We seek public comments on the design of a regulatory program to implement AS 42.45.350. We discussed the need for regulations at our public meeting on December 10, 2003, and we decided to seek public input. We set a procedural schedule for public workshops.

Background

In November 2000, Congress enacted legislation that, among other things, provided a method by which the State of Alaska can assume licensing and regulatory authority over certain water-power development projects located in Alaska that are currently licensed and regulated by the Federal Energy Regulatory Commission (FERC). See 16 U.S.C. 823c. The federal enabling legislation applies to water-power development projects:

1                   1) that are not part of a project licensed under 16 U.S.C. 792 – 823c or  
2                   exempted from licensing under 16 U.S.C. 792 – 823c or under 16 U.S.C. 2705  
3                   (sec. 405 of the Public Utility Regulatory Policies Act of 1978) before  
4                   November 9, 2000;

5                   2) for which the preliminary permit, a license application, or an application  
6                   for an exemption from licensing has not been accepted for filing by the FERC before  
7                   November 9, 2000, unless the application is withdrawn at the election of the applicant;

8                   3) that are part of a project that has a power production capacity of 5,000  
9                   kilowatts or less;

10                  4) that are located entirely within the boundaries of the state of Alaska;  
11                  and

12                  5) that are not located in whole or part on an Indian reservation, a  
13                  conservation system unit as defined in 16 U.S.C. 3102 (sec. 102, Alaska National  
14                  Interest Lands Conservation Act), or on a segment of a river designated for study for  
15                  addition to the National Wild and Scenic Rivers Systems.

16                  In the case of nonqualifying project work that would be qualifying project  
17                  work but for the fact that the project has been licensed or exempted from licensing by  
18                  the FERC before November 9, 2000, the licensee of the project may elect to make the  
19                  project subject to licensing and regulations by the state.

20                  The Alaska Legislature enacted legislation<sup>1</sup> amending AS 42.45 by adding  
21                  a new section (AS 42.45.350) that was entitled: “Licensing of water-power development  
22                  projects.”

23                  We are required to establish a regulatory program for the above  
24                  referenced water-power development projects. These regulations must protect the

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25                  <sup>1</sup>See ch. 107, SLA 2002, effective January 1, 2003.  
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public interest and the environment to the same extent provided by certain enumerated federal laws and give equal consideration to:

- energy conservation;
- the protection of, mitigation of damage to, and enhancement of, fish and wildlife, including related spawning grounds and habitat;
- the protection of recreational opportunities;
- the preservation of other aspects of environmental quality;
- interests of resident Alaska Natives;
- other beneficial public uses, including irrigation, flood control, water supply, navigation; and
- the interest of Alaska residents and landowners.<sup>2</sup>

Federal legislation requires the FERC to start a review of the state regulatory program within 30 days of an application by the Governor. The FERC has one year to complete its review. After completing its review, the FERC has 30 days to issue an order determining if the program is in compliance with 16 U.S.C. 823c(a) or the state's program will be deemed in compliance.<sup>3</sup>

#### Discussion

We believe that public involvement is a critical component in the development of these regulations. Strong participation from a broad spectrum of industry, governmental resource agencies, non-governmental organizations, the environmental community, Alaska Natives, and other members of the public is necessary to develop a complete record for decision. We propose to develop regulations that streamline and reduce costs of licensing while complying with federal

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<sup>2</sup>AS 42.45.350(b).

<sup>3</sup>16 U.S.C. 823c(i).

1 and state law. We will use workshops to gather comments from the public on their  
2 concerns and interest in the development of a state licensing program. We also  
3 propose to create a committee to provide input to us in this regulation process.

4 Request for Comments

5 We seek comments on the following issues to develop regulations to  
6 establish regulations for qualifying water-power development projects in Alaska:

- 7 1. We intend to conduct interactive and structural workshops to make a record to  
8 develop the regulations. Can you and/or your organization attend a workshop,  
9 and are you willing to provide written comments?
- 10 2. What are the institutional, regulatory, financial, and legal factors at the federal  
11 and state levels that either encourage or impair the development of a state  
12 licensing program? We offer the following information to assist in providing  
13 comments:
  - 14 a. Institutional – Intergovernmental, cultural, procedural, or relationship  
15 issues that either enhance or impair the ability of the state to develop a  
16 regulatory program for qualifying water-power development facilities.
  - 17 b. Regulatory – Federal, state, or local rules, ordinances, regulations,  
18 statutes, and codes that could affect the transfer of the program to the  
19 state.
  - 20 c. Financial – Financial practices, policies, or conditions that affect the  
21 transfer of the program to the state.
  - 22 d. Legal – Federal, state, or local statutes, codes, interpretations of laws,  
23 policy decisions, and court decisions that affect the transfer of the program  
24 to the state.
- 25 3. In the protection of the public interest and the environment, the RCA is  
26 required to give equal consideration to energy conservation; the protection of,

1 mitigation of damage to, and enhancement of, fish and wildlife, including  
2 related spawning grounds and habitat; the protection of recreational  
3 opportunities; the preservation of other aspects of environmental quality; the  
4 interests of resident Alaska Natives; other beneficial public uses, including  
5 irrigation, flood control, water supply, navigation; and the interest of Alaska  
6 residents and landowners. Should we give equal consideration to additional  
7 issues? Are there any of the above issues that in your opinion be given a  
8 higher priority than others? How can we fairly consider these factors in a  
9 licensing process at the state level efficiently?

- 10 4. Should any proposed state licensing program be patterned after the existing  
11 federal licensing processes? We provide web links to the three FERC  
12 processes for licensing that are now available.<sup>4</sup> Our intention in workshops is  
13 to provide information on the FERC licensing and to consider current FERC  
14 processes that could be efficiently used for our rulemaking.
- 15 5. Currently the FERC is classifying water-power development projects as either  
16 exempt, minor, and major projects.<sup>5</sup> Should the state program follow, modify,  
17 or develop its own classification of projects?

18 Comments to assist the RCA on the development of the regulations for  
19 water-power development projects must be filed by 4 p.m., January 28, 2004. We  
20 request that commentors reference Docket R-03-5 and that they include a diskette with  
21 their comments in IBM compatible text (.txt) format, MS Word (.doc) format, or Adobe  
22 Acrobat (.pdf) format.

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<sup>4</sup>Web link: <http://www.ferc.gov/industries/hydropower/gen-info.asp>.

25 <sup>5</sup>18 C.F.R. 4.101; 18 C.F.R. 4.30.

1 Since this is a notice of inquiry, commentors are not required to serve their  
2 comments on the other entities set out on the service list of this Order. We will post  
3 copies of all filed comments on our web site.

4 Request for Participation

5 We also seek to identify persons or organizations willing to participate in a  
6 committee to be formed after the three workshops and to meet several times during the  
7 next several months to provide verbal and/or written comments to us on the  
8 development of the proposed regulations.<sup>6</sup>

9 **ORDER**

10 THE COMMISSION FURTHER ORDERS:

11 1. The notice of inquiry regarding the development of regulations for  
12 water-power development projects is issued for public comment.<sup>7</sup>

13 2. The schedule of dates and locations for public workshops to be held in  
14 Anchorage, Juneau and Fairbanks, including an agenda for the first workshop, is set out  
15 in Appendix A to this Order and issued for public comment.

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<sup>6</sup>The RCA does not have the funds for committee expenses such as food,  
lodging, and travel expenses.

24 <sup>7</sup>If you are not interested in receiving future orders or notices concerning this  
25 subject matter, please e-mail [rca@state.ak.us](mailto:rca@state.ak.us) or notify our office by mail or at 1-907-  
26 276-6222 and we will remove your name from our mailing list.

1                   3. By 4 p.m., January 28, 2004, any interested person may address the  
2 issues and questions set out in this Order.<sup>8</sup> Commentors are requested to include a  
3 diskette with their comments in either IBM compatible text (.txt) format, MS Word (.doc)  
4 format, or Adobe Acrobat (.pdf) format.

5 DATED AND EFFECTIVE at Anchorage, Alaska, this 2nd day of January, 2004.

6                   BY DIRECTION OF THE COMMISSION

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24 <sup>8</sup>If you are a person with a disability who needs special accommodation to  
25 participate in this process, please contact Grace Salazar at 1-907-263-2107 or TTY  
26 1-907-276-4533 by January 21, 2004, to make any necessary arrangements.



# Locations and Dates of the Workshops

Location: **Anchorage, Alaska**

February 2, 2004

**Conference Room:**

Alaska Housing Finance Corporation  
4300 Boniface Parkway  
Board Room, Suite # 150  
Anchorage, Alaska 99504

Location: **Juneau, Alaska**

February 4, 2004

**Conference Room:**

National Marine Fisheries Service  
Regional Administrator's Conference Room  
Room 445C, Federal Building  
709 W. 9<sup>th</sup> Street  
Juneau, Alaska 99802

Location: **Fairbanks, Alaska**

February 6, 2004

**Conference Room:**

Department of Natural Resources  
3700 Airport Way  
Fairbanks, Alaska 99709-4699

# **Water-Power Workshop**

## **Establishing a state regulatory program for qualifying water-power development projects**

### **Agenda**

9:00 – 9:15 AM	Opening Remarks
9:15 – 9:30 AM	Introductions
9:30 – 9:40 AM	Discussion of Workshop Guidelines
9:40 – 10:00 AM	History of Water- Power Statute
10:00 – 10:30 AM	FERC Licensing Processes
10:30 – 10:45 AM	Break
10:45 – 12:00 PM	Issues Covered by FERC during Development of Latest Licensing Process
12:00 – 1:00 PM	Lunch
1:00 – 2:30 PM	Important Issues that should be Covered by a Potential State Program
2:30 – 2:45 PM	Break
2:45 – 4:15 PM	Potential State Program
4:15 – 4:30 PM	Scheduling Workshops